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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re I.R., et al., Persons Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.V.,

Defendant and Appellant.

E048747

(Super.Ct.Nos. J-215642, J-215643)

OPINION

APPEAL from the Superior Court of San Bernardino County. Marsha Slough,
Judge. Affirmed.

Michael D. Randall, under appointment by the Court of Appeal, for Defendant and
Appellant.

Ruth E. Stringer, County Counsel, and Danielle E. Wuchenich, Deputy County
Counsel, for Plaintiff and Respondent.

Defendant and appellant C.V. (mother) appeals from the juvenile court's orders terminating her parental rights to her two daughters, I.R. (born May 2007) and R.R. (born May 2006) and selecting adoption as their permanent plan. Specifically, mother argues the court erred when it determined that the parental bond exception to the preference for adoption does not apply here. As discussed below, we conclude that substantial evidence supports the juvenile court's determination that this exception does not apply. We thus affirm the juvenile court's orders.

SUMMARY OF FACTS AND PROCEDURE

Detention

Sheriff's deputies arrived at mother's home in June 2007 after mother's sister called 9-1-1 to report that I.R., then six weeks old, had finger-shaped bruises on her body from being squeezed by her father (father),¹ mother's boyfriend. Father was arrested and charged with cruelty to a child (Pen. Code, § 273a, subd. (b)). Mother was 18 years old and father was 20 years old. According to the police report, mother was heard screaming in the background during the 9-1-1 call for the caller to hang up, and mother admitted to the deputy that she was angry with her sister for reporting the incident because she wanted to handle the situation herself.

A social worker visited the home two days later. Mother had not yet taken I.R. to a doctor. Mother did so only at the social worker's insistence. I.R. was admitted to the

¹ Father is not a party to this appeal.

hospital to be assessed for Shaken Baby Syndrome the following day.² Also on the following day, both children were taken into protective custody because of I.R.'s bruises, evidence of domestic violence in the home in front of the children, and substance abuse by father. Both children were placed in confidential relative care with mother's sister.

On June 25, 2007, San Bernardino County Children and Family Services (CFS) filed petitions under Welfare and Institutions Code section 300³ regarding both children. The petitions alleged the abuse to I.R., domestic violence, and substance abuse by father. At the detention hearing held on June 26, 2007, the court found a prima facie case to detain the children out of their home. Father was ordered to undergo a drug test that day. Father provided a diluted sample, which still tested positive for marijuana.

Jurisdiction and Disposition

At a pre-trial settlement conference for the jurisdiction and disposition hearing, held on August 17, 2007, both parents signed a waiver of rights. The juvenile court ordered reunification services for both parents, along with one-hour visits twice per week, with CFS to liberalize visitation if warranted. The children were placed with a maternal cousin.

Six- 12- and 18- month Review Hearings

At the six-month review hearing held on March 20, 2008, the juvenile court terminated reunification services to father because he was not participating. The court

² I.R. suffered no lasting injuries.

³ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

continued services to mother, as well as the twice-weekly visits for both parents. The court ordered the children placed with the paternal grandmother.

At the twelve-month review hearing held on September 22, 2008, the juvenile court continued mother's reunification services and visits, and authorized unsupervised visits at the home of the paternal grandmother. The court reduced father's visitation to one time per month.

The eighteen-month status review hearing was held on February 6, 2009. The juvenile court followed the CFS recommendation to terminate reunification services and scheduled a section 366.26 hearing.

Selection and Implementation Hearing

The section 366.26 hearing was held on July 2, 2009. CFS recommended the court terminate mother's parental rights and release the children for adoption by mother's older brother and his fiancée. The children were at that time two and three years old, had been placed with mother's older brother since December 2008, and had significant contact with him prior to that.

Mother objected to having her parental rights terminated and the children adopted. She argued that the children's "primary maternal bond" was with her. At the end of the hearing, the juvenile court terminated mother's and father's parental rights and selected adoption as the permanent plan. This appeal followed.

DISCUSSION

Mother contends that the parental bond exception applies in this case and therefore the trial court erred in terminating her parental rights. We disagree.

We review a trial court's order terminating parental rights to determine whether it is supported by substantial evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) Under 366.26, subdivision (c)(1), the juvenile court must terminate parental rights if it finds by clear and convincing evidence that a child is adoptable unless it finds a compelling reason for determining that termination would be detrimental under one or more of the exceptions set out in subdivision (c)(1)(B). Under section 366.26, subdivision (c)(1)(B)(i), "the court may forego adoption and refrain from terminating parental rights only if a parent has maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship. To trigger the application of the parental relationship exception, the parent must show the parent-child relationship is sufficiently strong that the child would suffer detriment from its termination.

[Citation.] The benefit to the child from continuing such a relationship must also be such that the relationship "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.'" [Citations.] A child who is determined to be a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may benefit the child to some degree but does not meet the child's need for a parent. [Citation.] Adoption, when possible, is the permanent plan preferred by the Legislature if it is likely the child will be adopted. [Citation.]" (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449-450.) "To overcome the strong policy in favor of terminating parental rights and to fall within section 366.26, subdivision (c)(1)(B)(i)'s purview, the parent must show more than 'frequent and loving contact,' [citation], and be more to the

child than a mere ‘friendly visitor or friendly nonparent relative.’ [Citation.] The parent must show the parent-child bond is a ‘substantial, positive emotional attachment such that the child would be greatly harmed’ if parental rights were terminated. [Citation.]” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.)

At the section 366.26 hearing held on July 2, 2009, mother testified that she had last visited in person with the children during the first week of April. She moved to Washington on April 11 to attend nursing assistant school in Oregon. Mother testified that she spoke to the children on the phone about twice per week during that time. Mother would talk with R.R. for fifteen minutes at a time, but acknowledged that “it was hard to talk to [I.R.], because she was a baby.” Mother also sent e-mails to her brother that she asked be read to the children. Up until April of 2009, mother had missed only three visits during the dependency.

Prior to moving out of state, mother generally visited the children twice per week, sometimes in the relative caretaker’s home, sometimes at the CFS office. When the children were first placed with mother’s sister in June 2007, mother visited with them at the sister’s home, supervised by the sister. When the children were then placed with a maternal cousin in July 2007, the visits moved to the CFS office. In March 2008, the children were placed with the paternal grandmother. In April, the twice weekly visits were moved to the grandmother’s home. In June 2008, mother began to spend an additional two days per week, unsupervised, with the children at the grandmother’s home while the grandmother went out bowling and played softball. This lasted about two months. In August 2008, the visits returned to twice weekly at the CFS office at the

grandmother's request. At some point the grandmother once again began to supervise the visits at her home.

In December 2008, the children were moved to the home of mother's brother, his fiancée and their respective children. For about three weeks, mother visited with the children at her brother's home three times per week from 8:00 a.m. until 2:00 p.m. At the brother's request, the visits returned to the CFS office for one hour three times per week. The visits were decreased to twice per week, down to once per week by the end of March 2009. Mother moved to Washington in April 2009. Mother returned to the area the evening of June 23, 2009, presumably for the July 2 Section 366.26 hearing, but had not yet seen the children.

The evidence is clear that mother maintained regular visitation and contact with the children from the beginning of the dependency in June 2007 until early April 2009. However, as the juvenile court commented, mother "on her own, elected to move out of State at a very critical timeframe . . . as it relates to these children bonding with either her and/or the adoptive family." The e-mails were of little use in maintaining contact with the two- and three-year-old children, and mother admits that it was difficult to communicate by telephone with the youngest child, I.R. Thus, mother did not maintain regular visits and contact with the children for nearly the last three months of the dependency leading up to the section 366.26 hearing.

Even if we were to presume that mother had maintained regular visits and contact with the children, substantial evidence supports the juvenile court's conclusion that the children were not so strongly bonded to mother that continued contact with her would be

of more benefit to them than a permanent adoptive home. The children were only six weeks and one year old when they were removed from mother's care, and had spent the majority of their young lives in the care of various relatives. Mother never progressed to overnight visits with the children, and, even during the brief period in which she had unsupervised visits while the paternal grandmother left the home, mother was not allowed to take the children out of the home. Although mother testified that her visits with the girls were positive, that she cooked for them, read to them, sang with them and participated in helping them become potty-trained, this all ended when she moved to Washington. In addition, the social worker testified that mother's brother had reported that the children would "regress, somewhat" during visits with mother. Finally, the record indicates that the children were settling in well with their prospective adoptive family, and that there appeared to be mutual love and affection. For these reasons, we conclude that mother did not carry her burden to establish that the benefit to the children of maintaining the parental bond with mother outweighs the benefit to them of obtaining a stable, adoptive home.

DISPOSITION

The orders of the juvenile court are affirmed.

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RAMIREZ
P.J.

We concur:

McKINSTER
J.

MILLER
J.